

DEPARTMENT 53 - SUPERIOR COURT TRIAL RULES REVIEW

The following instructions are provided to assist you in presenting your trial in an organized, efficient manner. Our department takes great pride in offering trials to our employers, the public, which begin and end punctually, are as organized as possible, and designed to stay focused on the issues to be decided by the jury. Although a limited amount of time will be available prior to the jury's appearance on the first day of trial to discuss matters contained within this Trial Rules Review, its purpose is to shorten that discussion period and provide you with both a list of tasks to be accomplished prior to our first meeting and to acquaint you with what we expect from you and what you may expect from us.

1. Trial hours are 9:00 a.m. to 12:00 and 1:30 to 4:30 with 15-minute breaks at 10:30 and 3:00. Be on time.
2. Ensure that all exhibits have been pre-marked and exchanged between parties unless they are truly impeachment documents. Surprise exhibits that are not impeachment documents will usually end up in the circular file.
3. Ensure that in limine motions are filed and exchanged. This Court routinely defers ruling on many in limine motions, unless absolutely necessary to the parties, prior to opening statements. This necessity is a rare occasion. Hidden summary judgments in the form of in limine motions are disfavored, to say the least.
4. Please reduce all oral stipulations to writing. The format is irrelevant. The Court cannot enforce oral stipulations. Please protect yourselves.
5. You will be expected to return to the courtroom after a jury verdict to take and maintain your exhibits during the appeals period. A stipulation to that effect will be provided to you for your signature prior to the start of trial.
6. Prepare a verdict form(s) prior to opening statement. If you can agree upon a verdict form, that is fine. If you cannot agree, prepare a verdict form reflecting your client's proposed verdict. I want to know before we start what questions each of you wants answered by the jury.
7. Prepare a single set of instructions and provide them to the Court prior to the close of plaintiff's case-in-chief. Please tab those instructions not agreed to. Do not expend undue energy on preparing a mass of special instructions unless the issues are not specifically dealt with in either BAJI or CALJIC civil. The Court will not be reading dicta to the jury in the form of special instructions.
8. Please inform each other prior to meeting with the Court any evidentiary problems you anticipate such as the unavailability of expert witnesses, proposed scene visit, or stipulations concerning foundational requirements. The Court expects counsel to work together and cooperate in putting on a continual flow of witnesses regardless of whose case they support.

9. Please be aware of the requirements of Code of Civil Procedure section 2025 concerning the procedures for presenting oral or videotaped depositions, including but not limited to the requirement that the party intending to offer audio or video depositions shall notify the parties in writing of the parts of the deposition to be offered "within sufficient time for objections to be made and ruled on by the judge" (CCP § 2025(1)(2)(I)).

If you are using a deposition for cross-examination, simply indicate to the Court you wish to publish a portion of the witness' deposition, cite the page and lines, pause to allow counsel to find the subject page and lines, and read both question and answer to the jury without further addressing the witness.

10. Please do not expect to spend considerable periods of time with the Court outside the presence of the jury at either the noon or afternoon recesses. The Court is available to counsel at 8:30 a.m. each trial day. Please notify opposing counsel of your need to meet with the Court, indicate the problem, make an effort to work it out, and if not able to do so, agree to a time between 8:30 and 9:00 during which to meet with the Court. Do not expect our department to allow a jury to wait outside after 9:00 a.m.

11. The well is open. Feel free to try the case to the jury in the well. The Court will move about, as can opposing attorneys, to position themselves to observe exhibits published to the jury. Do not publish exhibits to the jury without first showing them to counsel.

12. Exchange all diagrams, charts and other evidence, demonstrative or otherwise, you intend to publish to the jury in opening statements. If objected to, this evidence will not be published to the jury in an opening statement. The Court will not make preliminary evidentiary rulings based on the assurance of admissibility by counsel.

13. Ensure that an up-to-date witness list and joint statement of the case is agreed upon and provided to the Court by 9:00 a.m. the date of trial. If a joint statement of the case cannot be agreed upon, the Court will utilize the Joint Trial Conference Statement.

14. The Court will use a "six pack" and voir dire all 18 prospective jurors utilizing the questions set forth in the "Examination of Prospective Jurors in Civil Cases," Division I, §8(c) of the Appendix to the California Rules of Court. The Court will also read questions to the jury submitted by the parties if they are either agreed upon or the Court determines they are submitted to aid in the selection of a fair and impartial jury. If two sides, each side will have six challenges. If more than two sides, please indicate such to the Court at our first meeting.

15. At the first meeting, the Court will elicit the names of the witnesses expected to testify, the length of their testimony, and the estimated length of opening statements.

16. If requested, the Court will inform the parties of the Court's requirement that counsel cooperate and work together. This will be done to ensure that parties unfamiliar with the cooperation

extended between officers of the court may wrongfully conclude their counsel are being too cooperative. Please advise the Court if you wish this discussion to occur. The Court expects counsel to work together as officers of the court.

17. This Court operates as a trial department five days a week, including Fridays. Please make arrangements to have your other Friday matters attended by someone else.

18. Please refrain from personal references when addressing the jury. Who you are, your accomplishments and personal experiences are irrelevant to the issues presented to the jury. Please refrain from interjecting your person, family, or experiences into this trial.

19. When preparing a final argument, please keep in mind that most juries become resentful after 45 minutes. Rebuttal also should be limited to only new issues raised by opposing parties' arguments and last no more than 10 to 15 minutes. This, of course, is only a general rule.

You will be held responsible for compliance with the rules set forth above. While the Court recognizes that every case is different and unique, we will deviate from the rules only for extremely good cause.

Good luck. Our department looks forward to the trial of your matter.

THOMAS O. LaVOY
Judge of the Superior Court